

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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CC:INTL:B02

PLR-118267-13

Date: September 9, 2013

LEGEND

Taxpayer =
Country X =
Company A =
Group B =
Company C =
Group D =
Company E =
Company F =
Company G =
Branch H =
Date 1 =
Year 2 =
Date 3 =
Year 4 =
Date 5 =

Dear :

This in response to a letter dated April 11, 2013, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg.

§ 301.9100-3 to make the election provided by IRC section 953(d), (“section 953(d) election”), to be treated as a domestic corporation for U.S. tax purposes for Taxpayer’s taxable year ending December 31, Year 2.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for this ruling, it is subject to verification on examination.

Taxpayer was incorporated in Country X on Date 1 by Company A, an entity not affiliated with or owned directly or indirectly by Group B. For the taxable year ending on December 31, Year 2, Taxpayer purportedly made a section 953(d) election pursuant to Notice 89-79, 1989-2 C.B. 392, to be treated as a domestic corporation for U.S. federal tax purposes. On Date 3, Company A was acquired by Company C, a U.S. corporation that was not affiliated with Group B at the time of the acquisition. Company A was merged or liquidated out of existence within Group D. In Year 4, Company E became the new owner of Taxpayer within Group D. On Date 5, as part of a larger spin off transaction, Taxpayer and Company E were indirectly acquired by Company F, a member of the consolidated Group B. As a result of the spin off, Taxpayer and Company E became part of the Group B consolidated return group.

For all of its taxable years since its incorporation in Year 2, taxpayer has filed its U.S federal income tax returns as either a member of consolidated group or on a separate company basis, consistent with having made a section 953(d) election. However, Taxpayer has been unable to find a signed copy of its Year 2 section 953(d) election and has determined that it should request a private letter ruling under Treas. Reg. §301.9100 to affirm its original election or to make a late election effective as Year 2, the year of its incorporation.

Taxpayer has represented in its affidavit that the request for relief was submitted before the failure to file the IRC section 953(d) election was discovered by the IRS. Taxpayer has filed all U.S. federal income tax returns since Year 2 as if a valid section 953(d) election had been made. Taxpayer intended at all times since Year 2 to make the election. Based on its belief that the section 953(d) election had been made, Taxpayer has represented itself to third parties as a domestic corporation for all U.S federal tax purposes and U.S. financial reporting purposes.

Taxpayer has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time that it requested relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested.

The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392 and Rev. Proc. 2003-47, 2003-2 C.B. 55, respectively. These rules provide that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Section 4.04(2), Rev. Proc. 2003-47. In addition, an electing corporation must use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax year. Section 1, Notice 89-79. The section 953(d) election was not filed by the due date of the return for the Year 2 taxable year and thus, was not a timely election.

Treas. Reg. § 301.9100-1(c) provides, in relevant part, that the Commissioner, in his discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. § 301.9100-3 to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all the subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that except as provided in Treas. Reg. § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer:

- (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- (ii) failed to make the election because intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Internal Revenue Service; or

- (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

However, Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy- related penalty has been or could be imposed under I.R.C. section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested, or if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election. Furthermore, a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1) provides in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by granting the relief.

Based solely on the facts and information submitted we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3 with respect to the election under section 953(d). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 953(d) in accordance with the rules set forth in Notice 89-79 and Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes effective for Taxpayer's short taxable year ending on Date 12.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the section 953(d) election. Treas. Reg. § 301.9100-1(a).

The Taxpayer should attach a copy of this letter to its section 953(d) election.

This ruling does not address any issues pursuant to IRC section 367.

This ruling is directed only to the taxpayer who requested it. I.R.C. section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Jeffery G. Mitchell
Branch Chief, CC:INTL:B02
(International)